



The Commonwealth of Massachusetts

**DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY**

MEMORANDUM

TO: D.T.E. 03-60 Service List (*via E-Mail and Regular Mail*)

FROM: Paula Foley, Assistant General Counsel
Jesse Reyes, Hearing Officer

RE: FCC's Interim Rules Order

DATE: October 1, 2004

CC: Mary L. Cottrell, Secretary

In the Department's August 23, 2004 Procedural Memorandum, the Department suggested that the parties in this proceeding "confer with each other and . . . provide the Department with a joint statement proposing the summary or summaries of the data to be submitted to the FCC" in response to the FCC's request for data in the Interim Rules Order.¹ Several parties responded to the Department's memorandum, either proposing a joint data collection effort with the Department or attempting to dissuade the Department from undertaking such an effort (see AT&T September 13 and September 22, 2004 Comments; Verizon September 7, 2004 and September 20, 2004 Comments; MCI September 13, 2004 Comments).

Given the very short time-frame provided by the Interim Rules Order in which to respond to the FCC's request, and because the Department stayed the D.T.E. 03-60 proceeding before any formal evidence was admitted into the record and before the Department made any findings on the parties' information relative to the FCC's "triggers" impairment analysis, the Department suggests that parties to this proceeding, if they choose to do so, submit to the FCC the information compiled in this proceeding that they deem appropriate. The Department intends to forward to the FCC procedural summaries of its D.T.E. 03-60 and D.T.E. 03-59 proceedings.

¹ In the Matter of Unbundled Access to Network Elements, WC Docket No. 04-313, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Order and Notice of Proposed Rulemaking, FCC 04-179 (August 20, 2004) ("Interim Rules Order").

In response to MCI's request that the Department modify its D.T.E. 03-60 Protective Order (issued October 1, 2003) to specifically authorize the forwarding of confidential information to the FCC, we determine that such modification is unnecessary because the Protective Order, as drafted, anticipates that a subsequent and related proceeding might be held at the FCC, in which the information contained in our D.T.E. 03-60 proceeding might be required.

Paragraph 9 of the Protective Order states in pertinent part:

9. Use. Persons obtaining access to stamped confidential documents under this Order shall use the information only in the conduct of this proceeding, other Department proceedings arising or resulting from this proceeding, and any Federal Communications Commission or judicial proceeding arising from this or such other Department proceedings Persons desiring to use Confidential Information in other Department proceedings arising or resulting from this proceeding, and any Federal Communications Commission or judicial proceeding arising from this or such other Department proceedings, must make best efforts to provide the information under seal or in some other manner to protect its confidentiality. [Emphasis added].

The relationship between the FCC's Interim Rules Order proceeding and our proceeding is analogous to the relationship between the FCC's Massachusetts 271 evaluation and our D.T.E. 99-271 proceeding. In that case, parties to D.T.E. 99-271 were permitted to submit confidential information compiled as part of the Department's investigation to the FCC in the FCC's subsequent evaluation pursuant to an identical provision in the D.T.E. 99-271 Protective Order. In the FCC's Interim Rules Order proceeding, the FCC has specifically requested information from parties involved in state proceedings, such as D.T.E. 03-60.

Therefore, we conclude that the above provision in the D.T.E. 03-60 Protective Order protects submission to the FCC of confidential materials that were provided as part of our D.T.E. 03-60 proceeding in the FCC's Interim Rules Order proceeding, subject to the additional requirements put in place by the FCC's protective order for its proceeding.